

United States Government

Department of Energy

# memorandum

DATE: July 31, 2001

REPLY TO: Office of Environmental Policy and Assistance: Thompson:69581  
ATTN OF:

SUBJECT: Clean Water Act: Total Maximum Daily Load Rule Delay

TO: Distribution

The purpose of this memorandum is to inform the Department of Energy (DOE) programs offices and field organizations of the recent Environmental Protection Agency (EPA) decision to propose an eighteen month delay to the July 13, 2000 rule, *Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; Final Rules*. EPA states that during this period a broad public process will be undertaken to determine what substantive changes should be made to the July 2000 rule and to the Total Maximum Daily Load (TMDL) program as a whole, to more effectively restore the Nation's waters. The July 2000 final rule included requirements for states: (1) to develop more comprehensive lists of all polluted waterbodies every four years; (2) to establish a schedule for clean-up plans for polluted waters within ten years; and (3) to develop an implementation plan, with specific dates by which the water quality standards would be met for point sources, nonpoint sources and other sources of pollution.

A TMDL specifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and allocates pollutant loading among point and nonpoint pollutant sources. Under Section 303(d) of the Clean Water Act (CWA), states, territories, and authorized tribes are required to develop lists of impaired waters. These are waters that do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology. States must establish priority rankings for waters on the lists and develop TMDLs for listed waters. The National Pollutant Discharge Elimination System (NPDES) permit limits may be based on TMDLs. The EPA must approve state lists and TMDLs. If a state submission is inadequate, EPA must establish the list or TMDL. The current TMDL regulation issued in 1992 are still in effect.

EPA is taking this action because of ongoing controversy surrounding the July 2000 rule, including legal challenges brought by many organizations, and as a result of the June 2001 National Academy of Sciences (NAS), National Research Council (NRC) study on the TMDL program. Last October, Congress placed the TMDL rule on hold and requested that the NRC assess the scientific basis of the TMDL program. The NRC report, *Assessing the TMDL Approach To Water Quality Management*, was issued on June 15, 2001. Prior to this request, the General Accounting Office, in March 2000, highlighted the pervasive lack of data at the state level available to set water quality standards, to determine what waters are impaired, and to develop TMDLs. The issue of TMDL development and implementation by States with permitting authority and by EPA is of concern due to the need to base the TMDL on validated data, sound economic

analysis and assessments of expected benefits that support the proposed TMDL, as well as its potentially high compliance cost. The Department has expressed similar concerns in written comments submitted to EPA on the proposed rule (January 2000) and a subsequent request regarding potential compliance costs (February 2001).

The NRC report recommended the following changes in the TMDL process with an understanding that, without such changes, the TMDL program will be unable to incorporate and improve upon the best available scientific information.

- States should develop appropriate use designations for waterbodies in advance of assessment and refine these use designations prior to TMDL development,
- EPA should approve the use of both a preliminary list and an action list instead of one 303(d) list,
- TMDL plans should employ adaptive implementation to ensure that progress will be made while better data are collected and analyzed with the intent of improving upon initial TMDL plans, and
- Data used and analytical methods employed should be revised to support the revisions to the TMDL process recommended above.

This report is available for review on the NAS website, <http://www.nap.edu/>. Information regarding the TMDL program can be obtained at EPA's website: <http://www.epa.gov/owow/tmdl/>.

If you have any questions regarding this information, please contact Lois Thompson of my staff by e-mail, [lois.thompson@eh.doe.gov](mailto:lois.thompson@eh.doe.gov), or phone (202) 586-9581.

A handwritten signature in black ink, appearing to read 'Andrew Wallo III', is positioned above the printed name and title.

Andrew Wallo III  
Director  
Air, Water and Radiation Division